

COPY

FILED

Theodor C. Albert, a Partner of
ALBERT, WEILAND & GOLDEN, LLP
P.O. Box 1860
Costa Mesa, California 92628-1860
Telephone: (714) 445-1013
Facsimile: (714) 966-1002

03 JUL 16 PM 2:01

JRNAL BY: _____

Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re

CHAD D. WARE,

Debtor.

Case No. SA 03-10857 JB

Chapter 7 Case

NOTICE OF CHAPTER 7 TRUSTEE'S
MOTION FOR AUTHORITY TO: (1) SELL
PERSONAL PROPERTY OF THE
ESTATE PURSUANT TO 11 U.S.C.
§§ 363(b) and (f), AND (2) EMPLOY
AUCTIONEER (ASSOCIATE MARINE
SPECIALISTS, LLC AND
INTERNATIONAL BOAT & MARINE
AUCTION SERVICES)

[No Hearing Required Pursuant to Local
Bankruptcy Rule 9013-1(g)(1)(A)]

TO ALL PARTIES IN INTEREST:

PLEASE TAKE NOTICE that Theodor C. Albert, the chapter 7 trustee (the "Trustee") of the estate of Chad D. Ware (the "Debtor"), will file a motion (the "Motion") seeking an order authorizing: (1) the sale at public auction of personal property of the estate pursuant to 11 U.S.C. §§ 363(b) and (f), and (2) the employment of an auctioneer.

I. FACTUAL BACKGROUND

On February 4, 2003, the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code and Theodor C. Albert was appointed chapter 7 trustee. On March 28, 2003, the case was converted to one under chapter 13. The case was reconverted to chapter 7 on May 20, 2003, and Theodor C. Albert was reappointed chapter 7 trustee.

1 The property to be sold consists of a 1941 100' tug utility vessel formerly known
2 as the "Independence," including all personal property on the vessel (the "Vessel"). The
3 Vessel is presently located in Newport Beach Harbor. The Debtor scheduled the Vessel
4 with an unknown value.

5 The Debtor's Schedule D reflects the claim of Union Bank of California, N.A.
6 ("Union Bank") against the Vessel. On March 12, 2003, Union Bank executed a
7 Satisfaction of Mortgage releasing the mortgage on the Vessel.

8 The Trustee is unaware of any lien or other interest in the Vessel.

9 **II. PROPOSED SALE OF THE VESSEL**

10 Associate Marine Specialists, LLC ("AMS") has inspected the Vessel. The
11 Trustee proposes to employ AMS and a related company, International Boat & Marine
12 Auction Services ("IB&M") (collectively, "AMS/IB&M"), to market and sell the Vessel at a
13 public auction sale to be conducted by AMS/IB&M.

14 AMS/IB&M has substantial experience in providing marine auction and appraisal
15 services and is well qualified to conduct the proposed auction of the Vessel. AMS/IB&M
16 is in the process of obtaining a \$50,000.00 Single Auction Performance Bond specifically
17 for the auction sale of the Vessel.

18 The auction is anticipated to be held in August 2003. AMS/IB&M's marketing
19 efforts will include advertising the auction in trade publications and distributing
20 approximately 500 brochures.

21 The Vessel is currently located in Newport Beach Harbor. The Trustee proposes
22 to conduct the auction sale at the Orange County Harbor Patrol office located at 1901
23 Bayside Drive, Corona del Mar, California.

24 The terms of the proposed auction are summarized as follows:

25 (1) Following advertising and pre-auction public viewing, the Vessel will
26 be sold to the highest bidder at the auction sale, provided the sale price is at least
27 \$20,000.00 or higher. The sale is as-is, where-is, without any representations or
28 warranties pursuant to 11 U.S.C. § 363(b).

(2) The sale is expected to be held in August 2003.

(3) The buyer will bear all costs of transferring title to the Vessel.

(4) AMS/IB&M will be allowed:

(a) An expense allowance not to exceed \$800.00 which will
include \$500.00 in advertising costs and \$300.00 in rental charges for a
generator to light the Vessel during the preview period;

(b) A 10% commission which will be paid from the proceeds of
the auction; and

(c) A 10% buyer's premium to be added to the cost of the sale
but which will not be paid from the proceeds of the auction.

1 (5) AMS/IB&M will be responsible for the collection of money from the
2 purchaser, providing a bill of sale to the purchaser, and providing the Trustee with
an itemized expense report, sold item report, and a check for net proceeds.

3 (6) AMS/IB&M will collect all gross proceeds of the sale and will pay all
4 applicable sales taxes. AMS/IB&M will turn over the net proceeds (gross
5 proceeds less applicable sales taxes) to the Trustee following the auction. In
6 compliance with Federal Rule of Bankruptcy Procedure 6004(4) and Local
Bankruptcy Rule 2016-1(1)(a), AMS/IB&M will file a sold item and expense report
with the Bankruptcy Court and serve a copy of the report on the Office of the
United States Trustee. The Trustee shall be authorized to pay AMS/IB&M's
commission and expenses without further order of the Court.

7
8 The Trustee believes that the proposed public auction is in the best interest of the
estate and will permit the value of the Vessel to be maximized as the auction will be
extensively advertised. The Trustee has received no offers to purchase the Vessel.

9
10 Jim Gram is an experienced auctioneer who has inspected the Vessel and
conservatively estimates the auction value of the Vessel at approximately \$25,000.00 -
11 \$40,000.00, which, after deducting AMS/IBM's commission of 10% and auction costs not
to exceed \$800.00, would net approximately \$21,700.00 - \$35,200.00 to the estate.

12 **III. EMPLOYMENT OF AUCTIONEERS**

13 The Trustee proposes to employ the auctioneering firm of AMS/IB&M to provide
14 advertising, registration of bidders, auctioneering, and collection services for the sale of
the Vessel. AMS/IB&M is highly experienced, does not hold an interest adverse to the
15 estate, is not a creditor of the Debtor, and no one employed by AMS/IB&M is related to
the bankruptcy judge in this case.

16 The terms of AMS/IB&M's proposed employment provide that:

17 (1) Advertising and other pre-sale costs, not to exceed \$800.00, will be paid
18 from the proceeds of sale without further order of the Court;

19 (2) AMS/IB&M will be paid a 10% commission from the proceeds of the
auction; and

20 (3) AMS/IB&M will charge a 10% buyer's premium to be added to the cost of
each sale, which will not be paid by the estate.

21 AMS/IB&M will provide the pre-auction services of advertising and preview,
22 auction services of conducting the auction and providing a bill of sale to the buyer, and
post-auction services of preparing a sold item and expense report.

23
24 The Trustee proposes that AMS/IB&M's 10% commission and marketing and
labor costs not to exceed \$800.00 be paid from the proceeds of sale, without further
order of the Court.

25 A complete copy of the Motion is on file at the Bankruptcy Court.

26
27 **PLEASE TAKE FURTHER NOTICE** that in accordance with Local Rule 9013-
1(g)(1), if you oppose the Motion you must file a written "Objection and Request for
28 Hearing" within 15 days of the date of this notice and serve a copy of the "Objection and
Request for Hearing" on the Trustee's counsel at the address above. Failure to timely

1 file and serve the "Objection and Request for Hearing" may result in the Court's entry of
2 an order approving the Motion.

3 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(1)(k)
4 provides:

5 "Papers not timely filed and served may be deemed by the Court to
6 be consent to the granting or denial of the motion, as the case may be."

7 DATED: July 14, 2003

8 
9 THEODOR C. ALBERT
10 Chapter 7 Trustee
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of
4 18 and not a party to the within action; my business address is 650 Town Center Drive,
Suite 950, Costa Mesa, California 92626.

5 On July 15, 2003, I served the foregoing document described as **NOTICE**
6 **OF CHAPTER 7 TRUSTEE'S MOTION FOR AUTHORITY TO: (1) SELL PERSONAL**
7 **PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(b) AND (f), AND (2)**
8 **EMPLOY AUCTIONEER (ASSOCIATE MARINE SPECIALISTS, LLC AND**
INTERNATIONAL BOAT & MARINE AUCTION SERVICES) on the interested parties in
this action by placing true copies thereof enclosed in sealed envelopes addressed as
follows:

9 SEE ATTACHED LIST

10 ☒ BY MAIL

11 ☐ I deposited such envelope in the mail at Costa Mesa, California. The
12 envelope was mailed with postage thereon fully prepaid.

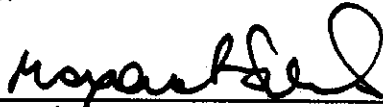
13 ☒ I am "readily familiar" with the firm's practice of collection and processing
14 correspondence for mailing. It is deposited with U.S. postal service on that
15 same day with postage thereon fully prepaid at Costa Mesa, California in
the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in
affidavit.

16 Executed on July 15, 2003, at Costa Mesa, California.

17 ☐ (State) I declare under penalty of perjury under the laws of the State of California
18 that the above is true and correct.

19 ☒ (Federal) I declare that I am employed in the office of a member of the bar of this
20 court at whose direction the service was made.

21 Margaret Sciesinski
22 Type or print name


23 Signature

SERVICE LIST:

Chard D. Ware
3419 Via Lido, #632
Newport Beach, CA 92663
Debtor

Bruce R. Fink, Esq.
1913 E. 17th St., #105
Santa Ana, CA 92705-8627
Attorney's for Debtor

Sharon L. Cromett, Esq.
Law Offices of Sharon L. Crommett
1901 Newport Blvd., Suite 165
Costa Mesa, CA 92627-2250

United States Trustee
Ronald Reagan Federal Building
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Jim Gram
Associate Marine Specialists, LLC
20672 Kelvin Lane
Huntington Beach, CA 92646
Auctioneer

REQUEST FOR SPECIAL NOTICE:

American Express Travel Related
c/o Becket & Lee LLP
P.O. Box 3001
Malvern, PA 19355-0701

Wells Fargo
P O Box 29491
Phoenix, AZ 85038

Wells Fargo
P.O. Box 522
Des Moines, IA 50302-9907

Wells Fargo
P.O. Box 348750
Sacramento, CA 95834

Wells Fargo
Recovery Dept.
P.O. Box 9210
Des Moines, IA 50302-9907

Wells Fargo Bank NA
BDD-Bankruptcy
P.O. Box 53476
Phoenix, AZ 85072-0701

Union Bank of California
c/o Everett G. Barry Jr., Esq.
401 W. A Street, 17th Floor
San Diego, CA 92101-7994

Union Bank of California
Loan Recovery Unit
M-711
P.O. Box 85443
San Diego, CA 92186-5443

Union Bank
8815 Mercury Court
San Diego, CA 92111

MBNA
P.O. Box 15102
Wilmington, DE 19886-5102

MBNA
P.O. Box 15677
Wilmington, DE 19850

MBNA America Bank
P.O. Box 35480
Newark, NJ 07193-5480

IN RE CHAD D. WARE
CASE NO. SA 03-10857 JB
MML

AUTOMOTIVE FINANCIAL
CORPORATION
3100 EAST 96TH STREET 300
INDIANAPOLIS, IN 46240

CALIFORNIA BOARD OF
EQUALIZATION
P O BOX 942879
SACRAMENTO, CA 94279

DISCOVER
P O BOX 30395
SALT LAKE CITY, UT 84130-0395

HARLEY DAVIDSON MOTORS
CREDIT
P O BOX
SAN LEANDRO, CA 94577

MAFS
400 NORTHRIDGE ROAD 800
ATLANTA, GA 30350

MBNA
P O BOX 15102
WILMINGTON, DE 19886-5102

MBZCC
P O BOX 685
ROANOKE, TX 76262

UNION BANK
8815 MERCURY COURT
SAN DIEGO, CA 92111

WELLS FARGO
P O BOX 29491
PHOENIX, AZ 85038

ADESA LA
11625 MINO WAY
MIRA LOMA, CA 91752

AMERICAN EXPRESS
P O BOX 0001
LOS ANGELES, CA 90096-0001

ARCADIA
2000 SOUTH FINLAND ROAD
LOMBARD, IL 60148

ATT BROADBAND
P O BOX 173885
DENVER, CO 80217-6885

BRIAN SMITH
C/O LAW OFFICE OF
RICHARD RUDOLPH
200 W. SANTA ANA BLVD, STE 200
SANTA ANA, CA 92701

BRIAN WRIGHT
39235 ETERNITY LANE
MURRIETA, CA 92563

CHASE
P O BOX 15902
WILMINGTON, DE 19850-5902

CINTAS CORPORATION
830 NORTH BATAVIA STREET
ORANGE, CA 92868-1225

CITIBANK
P O BOX 6408
THE LAKES, NV 88901-6408

CITY OF COSTA MESA
P O BOX 2730
HUNTINGTON BEAC, CA 92647

CITY OF NEWPORT BEACH
P O BOX 3080
NEWPORT BEACH, CA 92658-9080

CONNELL CHEVORLET
2828 HAVBOR BLVD
COSTA MESA, CA 92627

COUNTY OF ORANGE
P O BOX 1949
SANTA ANA, CA 92702

COUNTY OF ORANGE HEALTH
CARE DIVIS
2009 EAST EDINGER AVENUE
SANTA ANA, CA 92883

CYBERTEL COMMUNICATIONS
2820 LA MIRADA DR STE H
VISTA, CA 92883

DEALER SPECIALTIES
P O BOX 17405
CLEARWATER, FL 33762

DEALER SPECIALTIES
22125 17TH AVENUE SE STE 105
BOTHELL, WA 98021

EXPERIAN
475 ANTON BLVD
COSTA MESA, CA 92626

JAIME BOSHARO
170 RED MOUNTAIN
FALLBROOK, CA 92028

JIM RUTHERFORD
P O BOX 1091
RUNNING SPRINGS, CA 92382

MARK V PRODUCTS
400 EL SOBRANTE ROAD
CORONA, CA 92879

MEN-CAL RECYCLING
941 EAST FOURTH STREET
SANTA ANA, CA 92702

MOTOR WEB
P O BOX 17405
REDMOND, WA 98073

ONE STOP
11533 SLATER AVENUE UNIT A
FOUNTAIN VALLEY, CA 92708-5418

RON SCHMITDT'S USED CARS
1731 SPRING CYPRESS
SPRING, TX 77388

SAFETY-KLEEN
P O BOX 11393
COLUMBIA, SC 29211

SEARS
P O BOX 818017
CLEVELAND, OH 44181-8017

SOUTHERN CAL AUTO AUCTION
10700 BEECH AVENUE
FONTANA, CA 92337

SPORTS CLUB IRVINE
1980 MAIN STREET
IRVINE, CA 92614

TELECHECK EQUIPMENT SERVICE
P O BOX 17310
DENVER, CO 80217-0310

THE ALARM CENTER
P O BOX 19610
IRVINE, CA 92623-2610

THE TOLL ROADS
125 PACIFICA STE 120
IRVINE, CA 92618

WARE DISPOSAL
P O BOX 8206
NEWPORT BEACH, CA 92658

WELLS FARGO
P O BOX 348750
SACRAMENTO, CA 95834

WELLS FARGO
RECOVERY DEPARTMENT
P O BOX 9210
DES MOINES, IA 50302-9907

FIVE STAR AUTO GLASS
800 MONTEREY PASS RD
MONTEREY PARK, CA 91754

MBNA
PO BOX 15677
WILMINGTON, DE 19850

WELLS FARGO BANK N A
BDD-BANKRUPTCY
PO BOX 53476
PHOENIX, AZ 85072-0701

UNION BANK OF CALIFORNIA NA
C/O EVERETT G BARRY JR ESQ
401 WEST A STREET 17 FLOOR
SAN DIEGO, CA 92101-7994

UNION BANK OF CALIFORNIA, N.A.
LOAN RECOVERY UNIT, M-711
P.O. BOX 85443
SAN DIEGO, CA 92186-5443

DISCOVER FINANCIAL SERVICES
PO BOX 8003
HILLIARD, OH 43026

HARLEY-DAVIDSON CREDIT
ATTN: BANKRUPTCY DEPT,
2ND FLOOR
4150 TECHNOLOGY WAY
CARSON CITY, NV 89706

HARLEY DAVIDSON MOTORS
CREDIT
PO BOX
SAN LEANDRO, CA 94577

MBZCC
PO BOX 685
ROANOKE, TX 76262

UNION BANK
8815 MERCURY COURT
SAN DIEGO, CA 92111

WELLS FARGO
PO BOX 348750
SACRAMENTO, CA 95834

CALIFORNIA BOARD OF
EQUALIZATION
PO BOX 942879
SACRAMENTO, CA 94279

COUNTY OF ORANGE
PO BOX 1949
SANTA ANA, CA 92702-1949

WELLS FARGO
P.O. BOX 522
DES MOINES, IA 50302-9907

WELLS FARGO
P.O. BOX 348750
SACRAMENTO, CA 95834

CONNELL CHEVROLET
2828 HARBOR BOULEVARD
COSTA MESA, CA 92627

COUNTY OF ORANGE,
HEALTH CARE DIVIS
2009 EAST EDINGER AVENUE
SANTA ANA, CA 92705

CYBERTEL COMMUNICATIONS
2820 LA MIRADA DRIVE SUITE H
VISTA, CA 92083

DEALER SPECIALTIES
22125 17TH AVENUE SE
SUITE 105
BOTHELL, WA 98021

MBNA
P.O. BOX 15677
WILMINGTON, DE 19850

INTERNAL REVENUE SERVICE
MAIL STOP 5503
24000 AVILA ROAD
LAGUNA NIGUEL, CA 92677

AMERICAN EXPRESS TRAVEL
RELATED
C/O BECKET & LEE LLP
PO BOX 3001 DEPT
MALVERN, PA 19355-0701

SEARS ROEBUCK AND CO
PO BOX 3671
DES MOINES, IA 50322

MBNA AMERICA BANK NA
P O BOX 35480
NEWARK, NJ 07193-5480

WELLS FARGO BANK NEVADA NA
MAC#N8235-049
7000 VISTA DRIVE
WEST DES MOINES, IA 50266

STATE OF CALIFORNIA-EDD
PO BOX 826880
SACRAMENTO, CA 94280-0001

ORANGE COAST DODGE
2929 HARBOR BLVD
COSTA MESA, CA 92626

SOUTHERN CALIFORNIA EDISON
COMPANY
2131 WALNUT GROVE AVE
ROSEMEAD, CA 91770

EMPLOYMENT DEVELOPMENT
DEPARTMENT
BANKRUPTCY GROUP MIC 92E
P.O. BOX 826880
SACRAMENTO, CA 94280-0001

FRANCHISE TAX BOARD
ATTN: BANKRUPTCY
P. O. BOX 2952
SACRAMENTO, CA 95812-2952

INTERNAL REVENUE SERVICE
P. O. BOX 30213
LAGUNA NIGUEL, CA 92607-0213

UNITED STATES TRUSTEE
411 W FOURTH ST., SUITE 9041
SANTA ANA, CA 92701-4593